quoted with approval as authority for the proposition that the provision that a notice of intended prosecution should be served on the defendant is mandatory but the provision with regard to the specification of the time of the alleged offence is only directory. The purpose of the notice was to call the respondent's attention to the fact that he was to be prosecuted while the circumstances were still fresh in his mind. If that purpose was fulfilled an incorrect statement as to the time of the accident did not invalidate the notice. In *Teh Khian Long's case* the charge had specified that the offence had taken place at 5.50 p.m. on the 9th November, in Jalan Raja, Kuala Lumpur, whereas the notice of intended prosecution stated that the offence had taken place at 6 p.m. on the 8th November in Jalan Raja, Kuala Lumpur. In his judgment the learned Chief Justice stated:—

"It is true that here there was a discrepancy both as to the date and as to the time. The discrepancy as to the date, however, was of one day only and in the absence of any knowledge whatsoever of the circumstances of the case the Magistrate was not in a position to form any opinion as to whether the defendant could have been prejudiced in any way. If it had transpired at the end of the trial that the defendant had been involved in two accidents on two successive evenings in Jalan Raja, then the discrepancy between the charge and the notice would have called for very very careful examination with a view to ascertaining whether the defendant could have been in any way prejudiced. But until that position arose the discrepancy was so small that the Magistrate to my mind should have brushed the point aside on the ground that the mandatory part of the section had been complied with."

Mr. Chin, however, on behalf of the respondent, quoted the case of *Young* v. *Day* [3] in which the Divisional Court in England refused to set aside a decision of the Magistrates that a notice was insufficiently particularised where it stated the place of the offence as "the Hothfield to Bethersden Road" which was a minor road four miles long.

In *Teh Khian Long's case* the only real discrepancy was the date, the times being only very slightly dissimilar and the place of the accident being stated accurately in both the notice and the charge. In the present case neither the date nor the time nor the place of the accident were stated in the notice. Had it been the intention of the Legislature that a notice of intended prosecution, given very shortly after the commission of the offence, did not require to state the date, time and place of the offence, then the Ordinance would have said so. This was not a case where a genuine effort had been made to specify the date, time and place in the notice, and some discrepancy had crept in. This was not a case of a discrepancy so small that it could be brushed aside. There had been complete failure to specify either the date or the time or the place of the accident on the notice of intended prosecution and in my opinion Exhibit P.5 did not in consequence constitute a notice of intended prosecution within the meaning of section 56(b) of the Ordinance.

Accordingly I dismissed the appeal.

Appeal dismissed.

Solicitors: *Presgrave & Matthews.*

DE SILVA v. PUBLIC PROSECUTOR

[A.Cr.J. (Gill J.) January 11, 1964]

[Malacca — Criminal Appeal No. 13 of 1963]

Criminal Law—Bribery and corruption—Helping and recommending application for hawker's licence—Payment received for—Whether act in relation to his principal's affairs—Prevention of Corruption Act, 1961, s. 4.

Criminal Procedure—Impeaching credit of complainant—Application for—Refusal—Criminal Procedure Code (S.S. Cap.21), s. 124(2).

Evidence—Contradictions, discrepancies and falsehoods in complainant's evidence—Whether evidence to be rejected on that account.

The appellant, an Inspector in the Health Department, was charged under section 4 of the Prevention of Corruption Act for receiving four sums of money as inducement for doing an act in relation to his principal's affairs to wit assisting the complainant in obtaining a hawker's licence. He was convicted and sentenced to 6 months imprisonment on each charge. On appeal it was argued that the learned President (a) failed to apply the appropriate test in respect of the defence application under section 124(2) of the Criminal Procedure Code for the use of the complainant's statement to the police to impeach his credit; (b) erred in law in rejecting the evidence of good character of the appellant; (c) failed to apply his mind to the admitted vindicativeness of the complainant; (d) failed to direct his mind to the contradictions and discrepancies in the evidence.

Held: (1) the acts of the appellant were acts in relation to his principal's affairs within the meaning of section 4 of the Prevention of Corruption Act;

(2) the procedure as regards discrediting a witness by reference to his previous statement to the police is cumbersome and slow and therefore should not be used unless the apparent discrepancy is material to the issue. *Muthusamy* v. *Public Prosecutor* [1] followed;

(3) there was no evidence to justify the third ground of appeal;

(4) the contradictions and discrepancies or even demonstrable falsehoods in the evidence of a witness are not sufficient reason for rejecting the whole of the evidence of such witness. The proper approach is to view the evidence with suspicion and to treat it with caution. *Khoo Chye Hin* v. *Public Prosecutor* [2] followed.

Cases referred to:—

(1) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57.

(2) *Koon Chye Hin* v. *Public Prosecutor* [1961] M.L.J. 105.

CRIMINAL APPEAL.

David Marshall for the appellant.

Salleh bin Abbas (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Gill J.: This is an appeal from a decision of the Sessions Court, Malacca, whereby the appellant was convicted on four charges of corruptly accepting for himself as a Public Health Inspector in the Department of Health, Central District, Malacca from one Yap Kon Sang four sums of money on different dates between 9th March and 8th June, 1962 as an inducement for doing an act in relation to his principal's affairs, namely, helping and recommending the said Yap Kon Sang to obtain a hawker's licence, thereby committing an offence punishable under section 4(a) of the Prevention of Corruption Act, 1961. He was sentenced to six months' imprisonment on each charge, the sentences to run concurrently. There was an alternative charge under section 165 of the Penal Code in respect of each of the sums which the appellant accepted for himself without consideration from Yap Kon Sang, but he was not called upon to enter his defence on any of the alternative charges.

The prosecution case very briefly was that on or about 3rd or 4th March, 1962 the appellant wrote out for Yap Kon Sang (whom I shall call the complainant) an application for a hawker's licence addressed to the Rural District Council and made it known to him that he would have to pay money for the help which the appellant was going to render in obtaining a licence for him. The complainant paid the appellant a sum of $10 in a coffee shop in Malacca on 9th March, 1962. The application to the Rural District Council was first referred to the Police for their comments and later as regards health requirements to the Health Department in which the appellant was employed as a Public Health Inspector. On the matter being referred to the Health Department, and after certain routine formalities had been complied with, the appellant had a minute signed by his Chief Health Inspector to the Rural District Council to the effect that there was no objection to the complainant being granted a licence, and on this recommendation a licence was issued to the complainant. It is not clear on what date this minute was signed, but admittedly it was written by the appellant in his own handwriting. For the services which he rendered the appellant obtained $10 from the complainant on 23rd May and $5 on 28th May on his visits to the complainant's canteen at Sungai Udang. He received a final payment of $25 on the 8th of June, 1962 in the same canteen. Some time before that date the complainant had informed the Police about the demands which the appellant had been making for money and a trap was set by the Police, so that when he was arrested on 8th June, 1962 the money paid to him in marked notes was found on his person. The defence was a total denial of the receipt of the first three alleged payments. As regards the last payment the appellant's story was that he had borrowed the money from the complainant. Having considered all the evidence in the case, a summary of which he has set out in his judgment, the learned President came to the conclusion that the appellant was guilty of the offences charged and convicted him.

The appeal has been brought upon a number of grounds which are set out under paragraphs marked A, B, C, D and E in the petition of appeal. Mr. David Marshall appearing on behalf of the appellant stated at the outset that he was not proceeding with grounds numbered (1) to (4) under paragraph A of the petition of appeal. As regards the rest of the grounds, I propose to deal with them in the order in which they were argued by Mr. Marshall.

The first ground of appeal argued by Mr. Marshall is that the learned President failed to apply the appropriate test in respect of the defence application under the provisions of section 124(2) of the Criminal Procedure Code for the use of complainant's statement to the Police to impeach his credit as a witness, his contention being that he failed to consider the interests of justice as stipulated in the section. The learned President has stated in his judgment that upon perusing the complainant's statement he was satisfied that it gave an outline of substantially the same story as the complainant gave in Court and that he could find no apparent irreconcilable conflict between the two on any point material to the issue. It would seem clear that the learned President in dealing with the application had in mind the case of *Muthusamy* v. *Public Prosecutor* [1] in which Taylor J. stated that the procedure as regards the discrediting of a witness by reference to his previous statement to the police is cumbersome and slow and therefore should not be used unless the apparent discrepancy is material to the issue. With that statement of the law I respectfully agree, and that is what the learned President apparently had in mind. He has stated in his judgment that the statement which the complainant made to the police was substantially the same as his evidence in Court. In those circumstances he had no option but to disallow the application. This ground of appeal therefore is without any merit.

The next ground of appeal is that the learned President erred in law in rejecting the evidence of P.W.6 (Vasawa Singh) as to the good character of the appellant and in admitting evidence of bad character of the appellant. The only evidence of good character which P.W.6 gave was to the effect that the appellant was a loyal and conscientious worker. This evidence was brought out by Mr. Marshall in his cross-examination of this witness, and it was because

of this evidence that some evidence by the complainant as to the behaviour of the appellant in obtaining free drinks and free cigarettes from him was let in. It was because of the same evidence that some evidence was given by Dr. Sabaratnam (P.W.1) when he was recalled. However, the learned President has stated that in coming to his conclusions he disregarded the evidence of Dr. Sabaratnam as to the character of the accused. He has not stated anywhere in his judgment that he rejected the evidence of P.W.6 as to the good character of the accused, but even assuming that he did reject this evidence, it cannot be said that had he accepted this evidence he would have arrived at any different conclusion as to the guilt or otherwise of the appellant. This ground of appeal therefore cannot be sustained.

There is next the ground that the learned President failed to direct his mind to the admitted vindictiveness of the complainant and the benefits admitted and reasonably to be inferred which he could receive from making a false charge. I have gone through the evidence in this case very carefully and I find nothing in it to justify this ground. The complainant stated in no uncertain terms that the appellant demanded money from him. He went on to say that the appellant in fact was a nuisance to him because of his periodic demands for the payment of money. If the learned President accepted this as the truth, it was not open to him to say that the appellant was being vindictive. The complainant said in his evidence that he accepted no reward from the police for the charge or charges which he had brought against the complainant. How can it then be said that the learned President should have drawn some inference as to the benefits which the appellant was likely to obtain? I have no option therefore but to reject this ground of appeal as well.

The next ground of appeal is in relation to contradictions and discrepancies in the evidence of the complainant himself and the contradictions and discrepancies between his evidence and the evidence of some of the witnesses for the prosecution. In this connection much has been made of the different versions in Malay of the conversation which the appellant had with the complainant in the car when both of them, together with another witness named Toh Huat (P.W.12), travelled to Malacca after the appellant had written out the application for the complainant. Malay is obviously not the mother tongue of Yap Kon Sang and in answering the question as to the substance of the conversation he had in Malay with the complainant he obviously did not use the same Malay words each time the same question was put to him at varying intervals during his cross-examination, but to my mind this was not very surprising. It is doubtful whether even an educated person and speaking in his own language would use the same words unless he had committed the answer to memory in anticipation of the question. The important thing about each version was that some sort of demand for money was made by the appellant. This, to a large measure, was corroborated by Toh Huat (P.W.12), although his Malay version of the conversation did not tally with that of the complainant. Discrepancies and contradictions there will always be in any case. In considering them what the Court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy. It is true that the learned President has not specifically referred to these discrepancies and contradictions, but it does not follow that he did not consider them, particularly when he has given a fairly full summary of the evidence of each witness. I must therefore hold that this ground also is without merit.

Perhaps I should now deal with the ground as to the so-called patent falsehoods in the complainant's evidence because this ground is very closely linked up with the ground with which I have dealt in the previous paragraph. This so-called patent falsehood is in relation to the complainant's denial that he had seen the police that year. Having made this denial, he admitted that he was a detainee for four or five years for helping the communists and that he was later repatriated to Hongkong. Looking at the record, it is not possible to say with certainty what the complainant meant when he said that he did not see the police before that year, but he certainly made no attempt to deny the fact that at one time he was a communist sympathizer. This part of his evidence was very much in the mind of the learned President because he said in his judgment that he believed the complainant's evidence notwithstanding the fact that he had been a communist sympathizer. A witness is not to be disbelieved merely because of his association with communists, particularly when he made a frank disclosure of such association. Perhaps some part of the complainant's evidence was not true, but the question is whether a Court can reject the whole of his evidence because of some lies in his evidence. On this point a number of authorities were cited to me by Mr. Marshall. I have considered them very carefully and would content myself by relying on the case of *Koon Chye Hin* v. *Public Prosecutor* [2] which is binding upon me. It was said in that case by the Court of Appeal that if a witness demonstrably tells lies, his evidence must be looked upon with suspicion and treated with caution but to say that it should be entirely rejected would be to go too far. The learned President has said

that the complainant gave his evidence in a straightforward and cogent manner notwithstanding his severe cross-examination for a little more than one day by the defence. Having gone through this witness's evidence I must say that that is a correct appraisal of his evidence. I would therefore reject this ground of appeal.

It was next argued by Mr. Marshall that there was no justification for the learned President to come to the conclusion that there was corroboration of the complainant's evidence. It is true that the learned President has not stated specifically the various points on which the evidence of the complainant was corroborated, but here again on going through the evidence I am satisfied that the learned President had before him some evidence of a corroborative nature. There was no evidence to corroborate the first payment of $10 in the coffee shop in Malacca, but in relation to other payments there was ample corroboration as to the numerous visits which the appellant made to the complainant's canteen at Sungai Udang There was no corroboration of the actual payment of money on the two occasions in the canteen, but there certainly was full corroboration of the payment of $25 on the last occasion. In any event it is sufficiently clear that the learned President was fully alive to the danger of acting on some of the evidence of the complainant which was not corroborated. This ground of appeal must therefore also fail.

The next ground of appeal is that the learned President failed to direct his mind to the basic elements of the principal and alternative charges, and in particular, as to whether he found that the appellant received the monies for having prepared the letter for the signature of the complainant (P.W.11) or otherwise, and if the former, whether that was an act in relation to his principal's affairs. The short answer to the first part of this ground is that the learned President called on the defence on the principal charge and not the alternative charge. As regards the second part of this ground, the learned President has stated in his judgment that the appellant asked complainant for $50 for helping and recommending him to get the licence. There is a clear inference from this that in helping and recommending the complainant's application for a licence the appellant was doing an act in relation to his principal's affairs. This ground therefore is also without substance.

The next ground of appeal was that there was not a single word in the President's judgment about what was favourable to the defence. With very great respect to Mr. Marshall, I do not agree with that contention. The learned President has set out very carefully a brief summary of the complainant's evidence. He ended up by saying that having heard the defence he was not convinced of its truth, nor did he consider the story of the appellant as being reasonable or probable. Indeed, in his opinion the evidence of the appellant threw no doubt on the case for the prosecution. It is true he has given no specific reason for arriving at his conclusion, but there can be no doubt that he gave full consideration to the defence story. I am not in any way attempting to provide a reason as to why the learned President did not accept the appellant's story, but considering his grounds of judgment as a whole, it seems to me that the learned President did not consider it reasonable that a Public Health Inspector would go for a loan to a canteen keeper who admittedly was hardly able to make both ends meet and indeed owed the Government a large sum of money in respect of rents on the canteen building. In the circumstances I am compelled to say, even as regards this ground of appeal, that it is without any substance.

Closely allied to the last ground is the ground that nothing is mentioned in the learned President's judgment about the defence. This again does not seem to me to be factually true. As I have stated above the learned President did give a summary of the defence story in his grounds of judgment. In view of what I have stated above I must say that this ground also cannot hold water.

I now come to the ground of appeal that the learned President has failed to give any or any adequate reasons for the decision he arrived at. In this connection Mr. Marshall referred me to a number of local cases in which it has been held that the Court must give reasons for its findings of fact. In most of the cases cited to me the judgments of the lower Court were rather brief and sketchy and in some of them undue weight was placed on demeanour of witnesses, but the judgment of the learned President in this case is neither brief nor sketchy. It is by no means a model judgment, but it does set out the facts of the case fairly accurately and those facts in my mind support the conclusions at which the learned President arrived. Mr. Marshall's major complaint in this appeal seems to have been that the learned President has stated a number of legal formulae which he has used as convenient pegs on which to hang his judgment. I can see no reason to quarrel with a judgment which states such formulae and applies them correctly to the facts of the case. The duty of the learned President was to marshal all the facts of the case and then to consider their effect on the guilt or otherwise of the accused. This he has done quite satisfactorily and in my opinion his findings are not very much open to attack.

I do not think it necessary to deal with some of the other grounds of appeal which in substance were inter-related to the grounds with

which I have already dealt. All these other grounds are equally without any merit. I would like to state in conclusion that I have read through the record of appeal in this case many times. I have given very careful thought to all the arguments put forward by Mr. Marshall on behalf of the appellant with his usual thoroughness and persuasiveness, but I am compelled to say that the conviction of the appellant was neither wrong in law nor against the weight of the evidence. I must therefore dismiss the appeal against conviction. The appeal against sentence is also dismissed because I do not consider it in any way excessive.

Appeal dismissed.

PUBLIC PROSECUTOR v. YONG NAM SENG & ANOR.

[A.Cr.J. (Azmi J.) January 12, 1964]

[J.B. — Criminal Appeal No. 22 of 1963]

Customs and Excise—Dutiable goods—Incorrect declaration of—Alternatively failure to declare—Goods required by the Army—Exemption from duty under Customs Duties Exemption Order, 1959—Exemption form endorsed by Army authorities but signed by first respondent as importer—Goods supplied by second respondent—Question as to who was importer—Declaration signed at Singapore—Declaration presented at Johore Bahru customs gate—Whether within jurisdiction of Court at Johore Bahru.

Customs Ordinance, 1952, s. 129(1)—Observations.

One W.H. Ltd. contracted with the Army to carry out certain works at Terendak Camp, Malacca and in respect of the said works required plate glasses (dutiable goods) which had to be imported from Singapore. The Army authorities endorsed a declaration form claiming exemption from duty (under Customs Duties Exemption Order, 1959) showing the quantity of plate glass required and sent it to the W. H. Ltd. in Singapore. The declaration form was signed in Singapore by the first respondent who was at all material times the director of W. H. Ltd. The form was then sent to A. G. & Co. who supplied the glass. A. G. & Co. through the second respondent packed and handed the glass together with the declaration form to a transport company for transportation to Malacca. At the Johore Bahru customs gate it was found that the quantity of plate glasses was considerably in excess of the quantity shown in the declaration form. The respondents were charged under section 129(1)(a) and alternatively under section 129(1)(e) of the Customs Ordinance. The learned magistrate acquitted both respondents because he was of the view that the importer was A. G. & Co. and not the respondents. On appeal by the Public Prosecutor;

Held: (1) the first respondent as director of W. H. Ltd. signed the declaration form which he knew was a declaration of dutiable goods. Having put forward himself as the importer by signing the declaration he was responsible for the actual quantities described in the form which was prepared by his agent in Malacca;

(2) the signing of the declaration form at Singapore and its presentation at Johore Bahru was a continuous act culminating in an act committed within the jurisdiction of the Court at Johore Bahru.

Observations on what the prosecutor need prove under section 129(1) of the Customs Ordinance.

Cases referred to:—

(1) *Lee Szu Yin* v. *Public Prosecutor* [1962] M.L.J. 49.

(2) *R.* v. *Oliphant* [1905] 2 K.B. 67.

(3) *R.* v. *de Marny* [1907] 1 K.B. 388.

CRIMINAL APPEAL.

Wan Hamzah bin Mohd. Salleh (Deputy Public Prosecutor) for the appellant.

J. F. McWilliam for the respondents.

Cur. Adv. Vult.

Azmi J.: This is an appeal by the learned Public Prosecutor against the acquittal of both respondents by the learned Magistrate in Johore Bahru. The respondents were charged as follows:

"That you (1) Yong Nam Seng and (2) Ahamedkhan s/o Ibramkhan at about 10.30 a.m. on 3.7.63 at the Customs Import Bay, Johore Bahru, did make a declaration required by the Customs Ordinance, 42/52, which declaration was incorrect in that it stated in items 1, 2 & 3 in the said declaration that the goods were 296 pieces, 234 pieces and 8 pieces of glass respectively whereas in truth and in fact the goods were found to be 593 pieces, 468 pieces and 9 pieces of glass respectively and that you thereby committed an offence under Section 129(1)(a) and punishable under Section 129(1)of the Customs Ordinance, 42/52."

and in the alternative as follows:

"That you (1) Yong Nam Seng and (2) Ahamedkhan s/o Ibramkhan at about 10.30 a.m. on 3.7.63 at the Customs Import Bay, Johore Bahru being required by Section 75 of the Customs Ordinance 42/52 to make a declaration of dutiable goods to wit, 297 pieces 24" x 6" glass, 234 pieces 32" x 6" glass and 1 piece 36" x 24" glass, total 532 pieces of glass, imported by you, did fail to make such declaration thereby committing an offence under Section 129(1)(e) and punishable under Section 129 of the said Ordinance."

The facts for the prosecution case may be summarised as follows:

Messrs. Woh Hup Ltd. of Singapore had a contract to construct a fire station and other works in the Malacca Terendak Camp for the Army and for this purpose required certain amount of plate glasses which had to be imported from Singapore. These plate glasses are dutiable goods but since these articles were required for the Army, they were not subject to any import duty.

The Army Quantity Surveyor, P.W.1, stated that he endorsed the declaration, Exhibit P.1, on June 17, 1963 at Malacca. It was a term of the contract between the Army and Woh Hup Ltd. that the importation of materials required for the contract was to be the company's responsibility.

The certificate signed by the Surveyor claimed exemption from duty under the Customs Duties Exemption Order, 1959. The declaration form itself is described as a "Declaration of Dutiable Goods Imported at Johore Bahru" and there is a note to the effect that the declaration must be submitted in triplicate by the importer (the present owner of the dutiable goods) or his authorized agent. It would be seen, therefore, that the form was signed by the director of Woh